

cc to FTFDCOMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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November 21, 1967

Dear Mr. Knott:

By letter of July 11, 1967, you requested our opinion with respect to the authority of the Administrator of General Services under the provisions of Pub. L. 89-306, 79 Stat. 1127, which amended the Federal Property and Administrative Services Act of 1949 to provide for the economic and efficient purchase, lease, maintenance, operation, and utilization of automatic data processing equipment by Federal departments and agencies.

The complete text of Public Law 89-306 reads as follows:

"Sec. 111. (a) The Administrator is authorized and directed to coordinate and provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal agencies.

"(b)(1) Automatic data processing equipment suitable for efficient and effective use by Federal agencies shall be provided by the Administrator through purchase, lease, transfer of equipment from other Federal agencies, or otherwise, and the Administrator is authorized and directed to provide by contract or otherwise for the maintenance and repair of such equipment. In carrying out his responsibilities under this section the Administrator is authorized to transfer automatic data processing equipment between Federal agencies, to provide for joint utilization of such equipment by two or more Federal agencies, and to establish and operate equipment pools and data processing centers for the use of two or more such agencies when necessary for its most efficient and effective utilization.

"(2) The Administrator may delegate to one or more Federal agencies authority to operate automatic data processing equipment pools and automatic data processing centers, and to lease, purchase, or maintain individual automatic data processing systems or specific units of equipment, including such equipment used in automatic data processing pools and automatic data processing centers, when such action is determined by the Administrator to be necessary for the economy and efficiency

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of operations, or when such action is essential to national defense or national security. The Administrator may delegate to one or more Federal agencies authority to lease, purchase, or maintain automatic data processing equipment to the extent to which he determines such action to be necessary and desirable to allow for the orderly implementation of a program for the utilization of such equipment.

"(c) There is hereby authorized to be established on the books of the Treasury an automatic data processing fund, which shall be available without fiscal year limitation for expenses, including personal services, other costs, and the procurement by lease, purchase, transfer, or otherwise of equipment, maintenance, and repair of such equipment by contract or otherwise, necessary for the efficient coordination, operation, utilization of such equipment by and for Federal agencies: Provided, That a report of equipment inventory, utilization, and acquisitions, together with an account of receipts, disbursements, and transfers to miscellaneous receipts, under this authorization shall be made annually in connection with the budget estimates to the Director of the Bureau of the Budget and to the Congress, and the inclusion in appropriation acts of provisions regulating the operation of the automatic data processing fund, or limiting the expenditures therefrom, is hereby authorized.

"(d) There are authorized to be appropriated to said fund such sums as may be required which, together with the value, as determined by the Administrator, of supplies and equipment from time to time transferred to the Administrator, shall constitute the capital of the fund: Provided, That said fund shall be credited with (1) advances and reimbursements from available appropriations and funds of any agency (including the General Services Administration), organization, or contractor utilizing such equipment and services rendered them, at rates determined by the Administrator to approximate the costs thereof met by the fund (including depreciation of equipment, provision for accrued leave, and for amortization of installation costs, but excluding, in the determination of rates prior to the fiscal year 1967, such direct operating expenses as may be directly appropriated for, which expenses may be charged to the fund and covered by advances or reimbursements

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from such direct appropriations) and (2) refunds or recoveries resulting from operations of the fund, including the net proceeds of disposal of excess or surplus personal property and receipts from carriers and others for loss of or damage to property: Provided further, That following the close of each fiscal year any net income, after making provisions for prior year losses, if any, shall be transferred to the Treasury of the United States as miscellaneous receipts.

"(e) The proviso following paragraph (4) in section 201(a) of this Act and the provisions of section 602(d) of this Act shall have no application in the administration of this section; No other provision of this Act or any other Act which is inconsistent with the provisions of this section shall be applicable in the administration of this section.

"(f) The Secretary of Commerce is authorized (1) to provide agencies, and the Administrator of General Services in the exercise of the authority delegated in this section, with scientific and technological advisory services relating to automatic data processing and related systems, and (2) to make appropriate recommendations to the President relating to the establishment of uniform Federal automatic data processing standards. The Secretary of Commerce is authorized to undertake the necessary research in the sciences and technologies of automatic data processing computer and related systems, as may be required under provisions of this subsection.

"(g) The authority conferred upon the Administrator and the Secretary of Commerce by this section shall be exercised subject to direction by the President and to fiscal and policy control exercised by the Bureau of the Budget. Authority so conferred upon the Administrator shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed. The Administrator shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof by any agency. The

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Administrator shall provide adequate notice to all agencies and other users concerned with respect to each proposed determination specifically affecting them or the automatic data processing equipment or components used by them. In the absence of mutual agreement between the Administrator and the agency or user concerned, such proposed determinations shall be subject to review and decision by the Bureau of the Budget unless the President otherwise directs."

Your letter includes a summary of actions which have been taken to date by the Bureau of the Budget and the General Services Administration in getting underway implementation of the concepts inherent in section 111. GSA has prepared draft regulations designed to achieve what are believed to be the objectives of that section--to establish a single purchaser for all general purpose ADPE used by Federal agencies. You point out that the draft of these Government-wide regulations is based upon the interpretation that section 111 provides GSA with exclusive authority to procure all general purpose ADPE for use by Federal agencies but that the regulations will not include procedures or controls which could be interpreted as interfering with determinations of requirements for or use of ADPE by Federal agencies.

With a view to expediting and facilitating the orderly functioning of the procurement processes in the acquisition of ADPE, you request a decision on the question of the extent to which other Federal agencies may have independent authority to procure ADPE. Specifically you ask:

"* * * whether, on the one hand, other agencies are legally required to obtain a delegation of procurement authority from GSA or use GSA as the agency to purchase their general-purpose ADPE, or whether, on the other hand, agencies may acquire ADPE without regard to any actions which might be taken by GSA pursuant to section 111."

Your inquiry is prompted by the fact that although subsections 111(a) and (b)(1) of the act state that the Administrator shall provide ADPE for use by Federal agencies, they do not in so many words foreclose other agencies from acting without regard to your actions or regulations in the procurement of ADPE. Also, subsection (g) states that GSA is not to interfere with agency rights to select types and configurations of equipment needed. You point out that since selection of types and configurations

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of equipment is so closely related and interwoven with the actual acquisition, subsection (g) might be interpreted as implying authorization to agencies to acquire ADPE. Because the plain meaning associated with "types" in the ADPE field is that of a particular brand name, authority to select types might be considered tantamount to purchase of the equipment.

It is your belief, however, that the right, reserved to using agencies under subsection (g), to select types of equipment needed refers only to agency determinations regarding what equipment is to be purchased and does not encompass the procurement itself of such equipment.

The language of the act and its legislative history make it clear, in our opinion, that it was the legislative intent to place GSA in the position of acting, subject to direction and control by the President and the Bureau of the Budget, as the Government's single purchaser for all general purpose ADPE estimated to cover about 90 percent of the Government's requirements. At the same time it was recognized that full implementation of this single purchaser concept would necessarily require a considerable period of adjustments. The legislative history shows that the delegation authority provided in subsection (b)(2) was to be resorted to during the period the Administrator would be developing the necessary procedures toward assuming his exclusive jurisdiction in the ADPE area. See the lengthy treatment afforded the concepts underlying the act, as set forth in Senate Report No. 938, dated October 22, 1965; House Report No. 802, dated August 17, 1965; and Hearings before a subcommittee of the House Government Operations Committee on H.R. 4845, March 30, 31 and April 7, 1965.

Subsections 111(a) and (b) (1) quoted above clearly place authority in the Administrator of General Services and direct him to "provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal Agencies." Any question as to whether such authority and direction were intended to be exclusive is dispelled, it seems to us, by the provisions of subsection (b)(2) and of (e).

Subsection (b)(2) authorizes the Administrator to delegate his functions where he deems it necessary or desirable to do so. Such authority to delegate would not be necessary if the functions involved were not intended to be placed in GSA exclusively.

Subsection (e) eliminates for purposes of section 111 the exemptions granted certain agencies by sections 201(a)(4) and 602(d) of the Property Act with respect to the procurement of personal property generally. When the Property Act was passed in 1949, it was recognized at that time that, due to the peculiar missions of various agencies, complete compliance with

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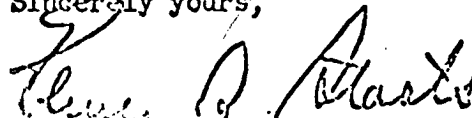
the uniform procedures might interfere with their operations; therefore, certain agencies were granted exemptions in sections 201(a)(4) and 602(d). Subsection 111(e) takes away these exemptions in the administration of section 111.

We recognize that responsibilities related to determining ADPE requirements, selecting types and configurations, and the use to be made of such equipment are divided by a fine line from responsibilities related to actual purchase of the equipment desired. Subsection (g) provides that the Administrator of General Services shall not interfere with determinations made by agencies in these areas. But whatever problems may arise between the various agencies and the exercise of GSA's procurement authority, subsection (g) specifically provides for their resolution by the Bureau of the Budget and the President. Again, it hardly seems necessary to spell out a forum for settling differences between GSA and the agencies, if GSA's authority were not otherwise intended to be exclusive.

The only evidence which might be interpreted as supporting the independent right of other agencies to procure ADPE, is found in subsections 111(c) and (d) which establish the ADP revolving fund. It could be argued that the authority given to GSA in subsections (a) and (b)(1) is to be invoked only in connection with fund activities, and until there is some affirmative action on the part of GSA to make a fund procurement on behalf of, and at the request of an agency, that agency would be free to continue procuring on its own. We believe, however that this argument is severely weakened by the provision for delegation of authority in subsection (b)(2). If the only exclusive authority the Administrator had been given was authority to purchase ADPE through the revolving fund, there would be no particular need to give him power to delegate procurement authority.

We have carefully reviewed the legislative history of Pub. L. 89-306 and find that it clearly supports the construction reached upon examination of the language of the act itself. Accordingly, you are advised that we concur in your construction of section 111 of the Federal Property and Administrative Services Act of 1949, as added by Pub. L. 89-306, as providing exclusive authority to GSA to procure all general-purpose ADPE and related supplies and equipment for use by other Federal agencies.

Sincerely yours,



Comptroller General
of the United States

The Honorable Lawson B. Knott, Jr.
Administrator, General Services
Administration

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